IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Narpat Mewara @ Narayan Vs. State of Rajasthan

S.B.CR.REVISION PETITION NO.474/2006

against the judgment dt.6.6.2006 passed by Sessions Judge, Jalore in Cr.Appeal No.22/2005.

DATE OF ORDER :: July 06, 2006

HON'BLE MR.H.R.PANWAR,J.

Mr. Rakesh Arora, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor.

BY THE COURT:

This criminal revision under section 397/401 of the Code of Criminal Procedure, 1973 (for short `the Code' hereinafter) is directed against the judgment dt. 6.6.2006 passed by learned Sessions Judge, Jalore (for short `the appellate court' hereinafter) in Cr.Appeal No.22/2005 whereby the appellate court dismissed the appeal filed by the petitioner against the judgment and order dt. 5.4.2005 passed by Additional Chief Judicial Magistrate, Jalore (for short `the trial court' hereinafter) in criminal case No.258/2003, convicting and sentencing the appellant for the offence under section 19/54 of the Rajasthan

Excise Act (for short `the Act' hereinafter). Aggrieved by the judgment and orders impugned, the petitioner has filed the instant revision petition.

I have heard learned counsel for the petitioner and the Public Prosecutor for the State. Carefully gone through the judgments and orders of the trial court as well as the appellate court. I have also gone through the evidence produced by the prosecution as shown by counsel for the petitioner.

At the very outset, counsel for the petitioner submits that the petitioner does not want to challenge his conviction for the offence under section 19/54 of the Act, however, learned counsel has confined his arguments on the point of sentence and submits that during the trial and after the judgment of the appellate court i.e. 6.6.2006, the petitioner has already undergone the imprisonment for more than a month. Learned counsel also submits that there is nothing adverse antecedent to the credit of the petitioner, on the contrary, it was his first offence, the petitioner has neither been charged nor convicted previously and, therefore, the substantive sentence of imprisonment awarded to the petitioner may be reduced to the period already undergone by the petitioner.

Learned Public Prosecutor submits that the sentence awarded cannot be said to be excessive warranting any further reduction.

I have given my thoughtful consideration to the rival submissions made by the learned counsel for the parties. The petitioner was put to trial for the offence under section 19/54 of the Act. On a report lodged by Excise Inspector, the search of the house of the petitioner was carried out and the petitioner was found in possession of 12 bottles of Bagpiper Whiskey and certain quarters of Mecdowel rum and gin etc. The petitioner has been facing trial since 2002. From the prosecution evidence, the prosecution has proved the case beyond reasonable doubt against the petitioner and, therefore, in my view the learned counsel rightly did not challenge the conviction of the petitioner. However, keeping in view the quantity of contraband liquor and the fact that the petitioner has already undergone imprisonment for more than a month as also there is nothing adverse antecedent to his credit and this being the first offence of the petitioner, in my view the ends of justice would be met if the substantive sentence of imprisonment is reduced to the period of imprisonment already undergone by the petitioner.

In the result, the revision petition is partly allowed. While

maintaining the conviction of the petitioner for the offence under section 19/54 of the Act and sentence of fine, the substantive sentence of imprisonment is reduced to the period of imprisonment already undergone by the petitioner. The petitioner is in jail. He be set at liberty forthwith on deposit of fine amount.

S.B.Criminal Misc. Bail Application No.120/2006 seeking suspension of sentence stands disposed of.

[H.R.PANWAR],J.

m.asif/-